

Part 6

Successor Corporation Asbestos-Related Liability Act

78B-4-601 Title.

This part is known as the "Successor Corporation Asbestos-Related Liability Act."

Enacted by Chapter 237, 2012 General Session

78B-4-602 Definitions.

As used in this part:

- (1) "Asbestos claim" means a claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:
 - (a) the health effects of exposure to asbestos, including a claim for:
 - (i) personal injury or death;
 - (ii) mental or emotional injury;
 - (iii) risk of disease or other injury; or
 - (iv) the costs of medical monitoring or surveillance;
 - (b) a claim made by or on behalf of a person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and
 - (c) a claim for damage or loss caused by the installation, presence, or removal of asbestos.
- (2) "Corporation" means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than this state.
- (3) "Successor" means a corporation that:
 - (a)
 - (i) assumes or incurs or has assumed or incurred successor asbestos-related liability;
 - (ii) is the successor corporation after a merger or consolidation; and
 - (iii) became a successor before January 1, 1972; or
 - (b) is a successor corporation of a corporation described in Subsection (3)(a).
- (4)
 - (a) "Successor asbestos-related liability" means liability:
 - (i) whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due;
 - (ii) that is related in any way to an asbestos claim; and
 - (iii)
 - (A) is assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation; or
 - (B) that is related in any way to an asbestos claim based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation.
 - (b) "Successor asbestos-related liability" includes liability that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 78B-4-605, was or is paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with a settlement, judgment, or other discharge in this state or another jurisdiction.

- (5) "Transferor" means a corporation from which successor asbestos-related liability is or was assumed or incurred.

Enacted by Chapter 237, 2012 General Session

78B-4-603 Applicability.

- (1) The limitations in Section 78B-4-604 apply to a successor.
- (2) The limitations in Section 78B-4-604 do not apply to:
- (a) workers' compensation benefits paid by or on behalf of an employer to an employee under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or a comparable workers' compensation law of another jurisdiction;
 - (b) a claim against a corporation that does not constitute a successor asbestos-related liability;
 - (c) an obligation under the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., as amended, or under a collective bargaining agreement; or
 - (d) a successor that, after a merger or consolidation, continued in the business of:
 - (i) mining asbestos;
 - (ii) selling or distributing asbestos fibers; or
 - (iii) manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Enacted by Chapter 237, 2012 General Session

78B-4-604 Measure of liabilities.

- (1) Except as further limited in Subsection (2), the cumulative successor asbestos-related liability of a successor is limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. A successor does not have responsibility for successor asbestos-related liability in excess of this limitation.
- (2) If the transferor had assumed or incurred successor asbestos-related liability in connection with a prior merger or consolidation with a prior transferor, the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in Subsection (1) for purposes of determining the limitation of liability of a successor.

Enacted by Chapter 237, 2012 General Session

78B-4-605 Establishing fair market value of total gross assets.

- (1) A successor may establish the fair market value of total gross assets for the purpose of the limitations under Section 78B-4-604 through any method reasonable under the circumstances, including:
- (a) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or
 - (b) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.
- (2) Total gross assets include intangible assets.
- (3)
- (a) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms,

conditions, and limits of the insurance may not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or related agreement including:

- (i) preenactment settlements resolving coverage-related disputes; and
 - (ii) the rights of an insurer to seek payment of applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable.
- (b) Without limiting Subsection (3)(a), to the extent total gross assets include liability insurance, a settlement, or a dispute concerning the liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before May 8, 2012, shall be determinative of the total coverage of the liability insurance to be included in the calculation of the transferor's total gross assets.

Enacted by Chapter 237, 2012 General Session

78B-4-606 Adjustment.

- (1) Subject to Subsections (2) through (4), the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:
 - (a) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the calendar year may be used; and
 - (b) 1%.
- (2) The rate found in Subsection (1) may not be compounded.
- (3) The adjustment of the fair market value of total gross assets shall continue as provided in Subsection (1) until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liability paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.
- (4) An adjustment of the fair market value of total gross assets may not be applied to any liability insurance that may be included in the definition of total gross assets by Subsection 78B-4-605(3).

Enacted by Chapter 237, 2012 General Session

78B-4-607 Scope.

- (1) Courts of this state shall construe this part liberally with regard to successors.
- (2) This part shall apply to an asbestos claim filed against a successor on or after May 8, 2012. This part shall apply to a pending asbestos claim against a successor in which trial has not commenced as of May 8, 2012, except that any provision of this part that would be unconstitutional if applied retroactively shall be applied prospectively.

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